81-6912

Case No. A-844

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

Term, 1982

Supreme Court, U.S.
FILED
JUN 11 1982
Alexander L. Stevas, Clerk

DAVID J. SCHOLL, APPELLANT

v.

RUDOLPH ANSELMI, et al

ON APPEAL FROM THE

SUPREME COURT OF THE STATE OF WYOMING

JURISDICTIONAL STATEMENT

David J. Scholl
Appellant acting
Pro Se

P.O. Box 2832
Jackson, Wyoming
83001

QUESTIONS PRESENTED ON APPEAL

I. Whether the Appellees may require, as a condition for obtaining a Wyoming Driver's License, that all applicants sign an "INFORMATION PRACTICE STATEMENT" which is a waiver of privacy giving the Appellees permanent, irrevocable permission to obtain all personal information from any source which they wish to obtain.

II. Whether due process of law was denied when the rule requiring the signing of the "INFORMATION PRACTICE STATEMENT" was imposed without following the rule making procedures required by the Wyoming Administrative Procedures Act.

III. Whether due process of law was denied when the Appellees failed to provide the Appellant a hearing, for a period of over one and one-half years, to review the denial of his license application, as required by the Wyoming Administrative Procedures Act.

IV. Whether the facts in the case are sufficient to warrant the award of general damages, and whether the signed, sworn, and notarized statement by the Appellant concerning the harm caused by the Appellees refusal to issue the license was sufficient and proper to warrant the award of special damages.

V. Whether a litigant in a civil rights suit acting pro se is entitled to the award of a reasonable attorney's fees under 42 USC 1988.

PARTIES TO THE PROCEEDINGS

All parties to these proceedings are listed in the caption to the case.

APPELLANT:

DAVID J. SCHOLL

APPELLEES:

RUDOLPH ANSELMI
R.A. HAKALA
DORAN LUMMIS

The above as individuals and as:
THE WYOMING TAX COMMISSION

and as APPELLEE:

DANIEL C. LEACH, JR.
as and individual and as the:
DIRECTOR, MOTOR VEHICLE DIVISION,
DEPARTMENT OF REVENUE AND TAXATION, STATE OF WYOMING

The Appellees are represented by:

Office of the Attorney General
State of Wyoming
State Capitol
Cheyenne, Wyoming
82001

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APPENDICES A:
OPINIONS OF THE COURTS BELOW

Portions on file in Clerk's Office

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CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED IN THE CASE.

TABLE OF AUTHORITIES

Other than the references to opinions in the courts below, which are listed on page 2; and the Constitutional Provisions, Statutes, and Regulations Involved, which are listed on page 4, this document cites as authorities:

42 USC 1983 on page 3

42 USC 1988 on pages 3,6, and 8

28 USC 1257 on page 3

REFERENCES TO OPINIONS IN THE COURTS BELOW

Letter Opinion of Judge Joseph Maier, dated May 1, 1981
First Judicial District of the State of Wyoming
Docket #91-413

Judgement and Order of Allowance of Peremptory Writ of Mandamus
First District Court, State of Wyoming
June 24, 1981, Docket # 91-413

Letter of Judge Maier, dated July 8, 1981
First District Court, State of Wyoming
docket # 91-413

Opinion of the Supreme Court of the State of Wyoming
February 11, 1982
Docket No. 5564

Note: There were no formal hearings and decisions by the administrative agencies involved. This is one of the issues in this case.

GROUNDS FOR JURISDICTION

1. This is an appeal from a decision by the Wyoming Supreme Court. That decision upheld a ruling by the trial court, which was the First District Court of the State of Wyoming on a petition for Writ of Mandamus.

2. The judgement by the First Distrcit Court of the State of Wyoming was issued on June 24th, 1981. That Judgement was entitled JUDGEMENT AND ORDER OF ALLOWANCE OF PEREMPTORY WRIT OF MANDAMUS. That judgement followed letter opinion by the judge of the First District Court of the State of Wyoming dated May 1, 1981.

The decision by the Wyoming Supreme Court upholding the lower court was issued on February 11, 1982.

Notice of Appeal was filed March 30, 1982 with the Clerks of both the Wyoming Supreme Court and the First District Court of the State of Wyoming.

3. The United States Supreme Court has jurisdiction in this case under the provisions of 42 USC 1983; 42 USC 1988; and 28 USC 1257.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

Constitution of the United States
Amendments IV, V, IX, XIV

Constitution of the State of Wyoming
Article 1, Sections 4,6,7,11,36, and 37

42 USC 1983

42 USC 1988 (With Legislative History of PL 94-557 (USCCaAN1976 p5908 ff)

The Privacy Act of 1974
5 USCS 552a page 178

Wyoming Administrative Procedures Act
W.S. 9-4-101 through 9-4-114

Wyoming Driver's License Act
W.S. 31-7-101 through 31-7-115

Wyoming Motor Vehicle Division Form # MDVL-705
(Note: This has not been adopted as a formal rule, but is enforced as a de facto rule - which is one of the issues in this case.)

Wyoming Code of Civil Procedures
W.S. 1-1-101

STATEMENT OF THE CASE

The Appellant had been licensed to drive in the state of Wyoming. As required, he went to renew his driver's license when it was to expire.

Appellant passed all tests required for the issuance of the license. However, the Appellant refused to disclose his Social Security number and objected to the "INFORMATION PRACTICE STATEMENT" - a waiver of privacy - on the license application form.

The Appellant informed the Appellee's agent that he objected on religious and consitutitonal grounds to the two requirements. The agent then refused to issue the license. The Appellant contactd Mr. Leach, an Appellee, directly, explaining his objections and requesting that the license be issued. Mr. Leach refused.

For a period of over one and one-half years, the Appellant repeatedly contacted the Appellees, by letter, by phone, and by personal contact, to demand issuance of a license and a review of the denial of his application. The Appellees refused to grant the license, and failed to hold a hearing on the matter, despite the requirements of the Wyoming Administrative Procedures Act.

Appellant filed for a Writ of Mandamus in the First District Court of the State of Wyoming. The Appellant asserted to that court that the rules were a violation of federal and state constitutional rights, and that the Appellees had denied him due process both in the method of adopting the rules and by their failure to hold administrative hearing on the Appellants appeals to the license denial. In a sworn, notarized Petition for Writ of Mandamus, the Appellant explicitly detailed the the damages caused by the Appellees refusal to issue the license.

The First District Court of the State of Wyoming ruled

The First District Court of the State of Wyoming ruled that the Appellant was entitled to the license, that the Appellees did not have statutory authority to require disclosure of his social security number, but that it could require the waiver of privacy and that the Appellant was not entitled to award of any damages.

The Appellant appealled the decision by that court to the Wyoming Supreme Court, requresting that the Wyoming Supreme Court find that the waiver was unconstitutionally over-braod and a violation of rights to privacy, that the Appellant was entitled to award of damages, and that Federal law (42 USC 1988) provided for award of reasonable attorney's fees for litigants who substantially prevail in a civil rights case - including pro se litigants.

The Wyoming Supreme Court upheld the decision of the First District Court of the State of Wyoming.

STATEMENT IN SUPPORT OF PLENARY CONSIDERATION

There are several issues of major import involved in this case.

First, the Appellees have claimed, and the Wyoming Courts have supported the claim, that the Appellees may require a permanent and extremely broad, irrevocable waiver of the right to privacy in order to obtain a driver's licesne from the State of Wyoming. In the Wyoming courts the Appellees have admitted that such a waiver would allow them to obtain without notice and at will information as personal and confidential as medical and psychological records. They also do not deny that the waiver would allow them to obtain, again without notice, without court order,and at will, information from insurance records, bank records, and any other source.

Such a requirement is blatantly over-broad and a violation of constitutionally protected rights to privacy.

Second, The United States Supreme Court has on several occassions pointed out the necessity to award damages in cases in which constitutional rights were violated, in order to protect those rights by discouraging their infringement and by encouraging citizens to seek the protection of rights through the courts. By refusing to award any damages in this case, the Wyoming Courts have acted contrary to the expressed intent of the United States Supreme Court.

Third, it is imperative that the procedures for adopting rules with the force of law be followed closely to prevent arbitrary rule making and usurption of legislative powers. In this case the Appellees admitted that they did not follow the procedures as required by Wyoming law. Nevertheless, the Wyoming Courts ignored that fact - although agreeing that it was a fact - and ruled that the Appellees' rule was enforceable.

Fourth, it is imperative that rights to administrative hearings be carefully protected. In this case the Appellees failed, despite repeated demands from the Appellant, to review his objections to their rules and to their denial of a driver's license. Wyoming law clearly requires such hearings. Nevertheless, the Wyoming courts ignored the failure to hold such hearings.

Fifth, Pro Se litigants seeking redress of violations of constitutional rights deserve the encouragement to seek such redress - encouragement which was the intent of 42 USC 1988. The Federal and State courts are widely divided on the issue of awarding reasonable attorenys' fees to pro se litigants under 42 USC 1988. It is imperative that the United States Supreme Court make a definitive ruling on the issue in order to provide guidance to the courts below.